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8

9 **BEFORE THE**
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. VN-2005-596

13 **BRENDA AUSTIN, aka**
14 **BRENDA JOHNSON, aka**
15 **BRENDA LEE AUSTIN, aka**
16 **BRENDA LEE JOHNSON, aka**
17 **BRENDA LEE EARNEST, aka**
18 **BRENDA LEE GOMEZ**
9408 Snow Creek Circle
Stockton, CA 95212

ACCUSATION

Vocational Nurse License No. VN 154838,

Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this
23 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
24 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

25 2. **Brenda Austin**. On or about December 30, 1991, the Board of
26 Vocational Nursing and Psychiatric Technicians ("Board") issued Vocational Nurse License
27 Number VN 154838 to Brenda Austin, also known as Brenda Johnson, also known as Brenda
28 Lee Austin, also known as Brenda Lee Johnson, also known as Brenda Lee Earnest, also known

1 as Brenda Lee Gomez ("Respondent"). The license will expire on October 31, 2009, unless
2 renewed.

3 JURISDICTION

4 3. Section 118 of the Business and Professions Code ("Code") provides, in
5 pertinent part:

6 (b) The suspension, expiration, or forfeiture by operation
7 of law of a license issued by a board in the department, or its
8 suspension, forfeiture, or cancellation by order of the board or
9 by order of a court of law, or its surrender without the written
10 consent of the board, shall not, during any period in which it
11 may be renewed, restored, reissued, or reinstated, deprive the
board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided
by law or to enter an order suspending or revoking the license o
r otherwise taking disciplinary action against the licensee on
any such ground.

12 4. Code section 2875 provides:

13 Every licensee may be disciplined as provided in this
14 article. The proceedings under this article shall be conducted in
15 accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the
Government Code, and the board shall have all the powers granted
therein.

16 5. Code section 2892.1 provides, in pertinent part:

17 Except as provided in Sections 2892.3 and 2892.5, an
18 expired license may be renewed at any time within four years after
19 its expiration upon filing of an application for renewal on a form
prescribed by the board, payment of all accrued and unpaid renewal
fees, and payment of any fees due pursuant to Section 2895.1.

20 STATUTORY PROVISIONS

21 6. Code section 2878 provides, in pertinent part:

22 The Board may suspend or revoke a license issued under
23 this chapter [the Vocational Nursing Practice Act (Bus. & Prof.
Code, § 2840, et seq.)] for any of the following:

24

25 (f) Conviction of a crime substantially related to the
26 qualifications, functions, and duties of a licensed vocational nurse,
27 in which event the record of the conviction shall be conclusive
evidence of the conviction.

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1 (j) The commission of any act involving dishonesty, when
2 that action is related to the duties and functions of the licensee.

3 7. Section 2878.6 of the Code states:

4 A plea or verdict of guilty or a conviction following a plea
5 of nolo contendere made to a charge substantially related to the
6 qualifications, functions and duties of a licensed vocational nurse
7 is deemed to be a conviction within the meaning of this article.
8 The board may order the license suspended or revoked, or may
9 decline to issue a license, when the time for appeal has elapsed,
10 or the judgment of conviction has been affirmed on appeal or when
11 an order granting probation is made suspending the imposition of
12 sentence, irrespective of a subsequent order under the provisions
13 of Section 1203.4 of the Penal Code allowing such person to
14 withdraw his plea of guilty and to enter a plea of not guilty, or
15 setting aside the verdict of guilty, or dismissing the accusation,
16 information or indictment.

17 8. Code section 125.3 provides that the Board may request the administrative
18 law judge to direct a licensee found to have committed a violation or violations of the licensing
19 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
20 the case.

21 REGULATORY PROVISIONS

22 9. California Code of Regulations, title 16, section 2521, provides:

23 For the purposes of denial, suspension, or revocation of a
24 license pursuant to Division 1.5 (commencing with Section 475)
25 of the Business and Professions Code, a crime or act shall
26 be considered to be substantially related to the qualifications,
27 functions or duties of a licensed vocational nurse if to a substantial
28 degree it evidences present or potential unfitness of a licensed
vocational nurse to perform the functions authorized by his license
in a manner consistent with the public health, safety, or welfare.

29 FIRST CAUSE FOR DISCIPLINE

30 (Conviction of Crimes)

31 10. Respondent's license is subject to discipline under Code section 2878,
32 subdivision (f), in that Respondent was convicted of the following crimes:

33 a. On or about November 4, 2005, in the case entitled, "*The People v.*
34 *Brenda Lee Austin, aka Brenda Lee Johnson, aka Brenda Lee Earnest, aka Brenda Lee Gomez*"
35 (Super. Ct. San Joaquin County, 2005, No. SF95608A), Respondent was convicted by the court

1 upon a plea of guilty of violating Unemployment Insurance Code section 2101, subdivision (a)
2 (false statement regarding aid), and Unemployment Insurance Code section 2116, subdivision (b)
3 (disability fraud), both felonies and crimes substantially related to the qualifications, functions, or
4 duties of a licensee within the meaning of California Code of Regulations, title 16, section 2521.

5 As set forth in the criminal complaint, the circumstances of the convictions are as follows:

6 1. On or about July 8, 1999, Respondent willfully and unlawfully
7 made a false statement and representation, and did knowingly fail to disclose a material fact to
8 obtain, increase, reduce, and defeat a benefit and payment under a statute administered by the
9 Department of Employment Development, to wit, presented document with forged doctor's
10 signature. (Unemp. Ins. Code, § 2101, subd. (a).)

11 2. On or about July 8, 1999, Respondent knowingly presented
12 and caused to be presented a false and fraudulent written and oral material statement in support
13 of a claim for disability insurance benefits. (Unemp. Ins. Code, § 2116, subd. (b).)

14 b. On or about July 13, 2000, in the case entitled, "*The People v.*
15 *Brenda Lee Johnson, aka Brenda Lee Austin*" (Super. Ct. Santa Clara County, 2000, No.
16 B9947382), Respondent was convicted by the court upon a plea of nolo contendere of violating
17 Penal Code section 273.5, subdivision (a) (corporal injury on a spouse), Penal Code sections 242
18 and 243, subdivision (e) (battery on a spouse), and Penal Code section 415 (1) (public fighting),
19 all misdemeanors and crimes substantially related to the qualifications, functions, or duties of a
20 licensee within the meaning of California Code of Regulations, title 16, section 2521. As set
21 forth in the criminal complaint, the circumstances of the convictions are as follows:

22 1. On or about December 23, 1999, Respondent willfully inflicted
23 upon J. A., her spouse, corporal injury resulting in a traumatic condition. (Pen. Code, § 273.5,
24 subd. (a).)

25 2. On or about December 23, 1999, Respondent willfully and
26 unlawfully used force and violence against a spouse, J. A. (Pen. Code, §§242, 243, subd. (e).)

27 3. On or about December 23, 1999, Respondent unlawfully fought
28 in a public place or challenged another person in a public place to fight. (Pen. Code, § 415(1).)

1 c. On or about March 18, 1996, in the case entitled, "*The People v.*
2 *Brenda Lee Johnson, aka Brenda Lee Earnest, aka Brenda Lee Gomez*" (Super. Ct. Santa Clara
3 County, 1996, No. E9696777), Respondent was convicted by the court upon a plea of guilty of
4 violating Penal Code section 666 (theft), a misdemeanor and a crime substantially related to
5 the qualifications, functions, or duties of a licensee within the meaning of California Code of
6 Regulations, title 16, section 2521. As set forth in the criminal complaint, the circumstances
7 of the convictions are as follows:

8 1. On or about February 19, 1996, having been previously
9 convicted of the crime of petty theft in the Municipal Court of the State of California, County of
10 Santa Clara, and having served a term thereafter in a penal institution, Respondent unlawfully
11 stole, took, and carried away personal property, to wit: merchandise, the property of Long's
12 Drugs. (Pen. Code, § 666.)

13 d. On or about May 24, 1989, in the case entitled, "*The People v.*
14 *Brenda Lee Gomez*" (Super. Ct. Santa Clara County, 1989, No. E8954053), Respondent was
15 convicted by the court upon a plea of guilty of violating Penal Code section 488 (petty theft),
16 a misdemeanor and a crime substantially related to the qualifications, functions, or duties of a
17 licensee within the meaning of California Code of Regulations, title 16, section 2521. As
18 set forth in the criminal complaint, the circumstances of the convictions are as follows:

19 1. On or about March 28, 1989, Respondent stole the property
20 of another. (Pen. Code § 488.)

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Commission of Dishonest Acts)

23 11. Respondent's license is subject to discipline under Code section 2878,
24 subdivision (j), in that, as more particularly set forth under paragraphs 10(a), 10(b), and 10(d),
25 Respondent committed acts involving dishonesty.

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1 PRAYER

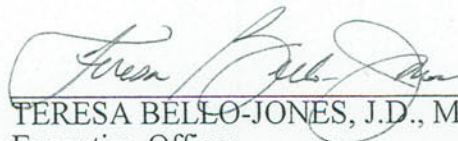
2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing the Board issue a decision:

4 1. Revoking or suspending Vocational Nurse License Number VN 154838,
5 issued to Brenda Austin, also known as Brenda Johnson, also known as Brenda Lee Austin, also
6 known as Brenda Lee Johnson, also known as Brenda Lee Earnest, also known as Brenda Lee
7 Gomez;

8 2. Ordering Brenda Austin, also known as Brenda Johnson, also known
9 as Brenda Lee Austin, also known as Brenda Lee Johnson, also known as Brenda Lee Earnest,
10 also known as Brenda Lee Gomez, to pay the reasonable costs incurred by the Board in the
11 investigation and enforcement of this case pursuant to Code section 125.3; and,

12 3. Taking such other and further action as deemed necessary and proper.
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14 **DATED:** November 5, 2007
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17 TERESA BELLO-JONES, J.D., M.S.N., R.N.
18 Executive Officer
19 Board of Vocational Nursing and Psychiatric Technicians
20 Department of Consumer Affairs
21 State of California
22 Complainant
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